Feasibility of Privatizing Certain Health Regulation Functions

By the Staff of
The Florida House of Representatives
Committee on Health Regulation
The Honorable Frank Farkas, D.C., Chair
The Honorable Eleanor Sobel, Vice Chair
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INTRODUCTION

The Committee on Health Regulation has undertaken a review and evaluation of the feasibility of privatizing certain health practitioner regulatory functions. By direction of Representative Farkas, Chair of the committee, staff prepared this interim project report which offers members a summary of the issues as well as possible options and recommendations for legislative action.

The impetus for this interim project was the dissatisfaction with the current health practitioner regulation processes in place within the Department of Health (DOH) and the Agency for Health Care Administration (AHCA) expressed by certain health professions. Most notably, the Florida Board of Dentistry and the Florida Dental Association have expressed serious concerns over the handling of disciplinary cases by the Agency for Health Care Administration under contract with the Department of Health. Additional concerns over other aspects of the regulatory process were also expressed and have been examined as part of this interim project.

The purpose of this study is to review the operation of the Florida Engineers Management Corporation, established by the Legislature in 1997, in comparison to the current health practitioner regulatory model, and determine whether privatization of the administrative, investigative, and prosecutorial activities of health practitioner regulation would result in a cost savings and more efficiency in regulating certain health care professions.

The methodology used to prepare this report was a review and analysis of available audits, reviews, reports, and previous analyses, as well as independent research through written questionnaires and in-person interviews. Existing contracts, performance indicators, and financial data were also reviewed and analyzed.

From the information that staff has reviewed, the following options appear to be available for consideration by the Legislature:

1. Provide statutory authorization for boards to out-source particular regulatory functions so long as certain performance and cost-control measures are used.

2. Retain regulation as a service provided by state employees but eliminate overlapping and duplicative services and enhance performance and cost-control measures.

3. Maintain the existing regulatory framework.

Each of the aforementioned options are discussed in detail in this report.

EXECUTIVE SUMMARY

The impetus for this interim project was the dissatisfaction with the current health practitioner regulation processes in place within the Department of Health (DOH) and the Agency for Health Care Administration (AHCA) expressed by certain health professions. Most notably, the Florida Board of Dentistry and the Florida Dental Association have expressed serious concerns over the handling of disciplinary cases by the Agency for Health Care Administration under contract with the Department of Health. Additional concerns over other aspects of the regulatory process were also expressed and have been examined as part of this interim project.

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There are several types of privatization being used today. According to *The Revolution in Privatization* by Lawrence W. Reed, printed in the Journal of the James Madison Institute, Summer 2001, pp. 20-24, 32, the most common form of privatization is known as "out-sourcing" or "contracting out." This form of privatization is already being used in health practitioner regulation with regard to licensure renewal, certain national examinations, and standardized credentialing. Also, certain cases have been contracted out to private attorneys for prosecution if the Agency was unable or unwilling to prosecute.

In *Assessing Privatization in State Agency Programs,* Report No. 98-64, published by the Florida Legislature Office of Program Policy Analysis and Government Accountability (OPPAGA), February 1999, there is a list and explanation of potential advantages and disadvantages to privatization of public services.

The *advantages* of privatization noted in the OPPAGA Report No. 98-64 include:

- ✓ Cost savings.
    - o Lower labor costs.
    - o Reduced regulatory requirements.
    - o Reduced overhead.
    - o More personnel flexibility.
    - o Better equipment.
    - o Faster reactions to changing conditions.
- ✓ Staffing flexibility/obtain needed expertise.
- ✓ Political factors.
- ✓ Shift start-up costs to private sector.

The *disadvantages* of privatization noted in the OPPAGA Report No. 98-64 include:

- ✓ Reduced public accountability.
- ✓ Service quality problems.
- ✓ Higher long-term costs.
- ✓ Workforce issues.

In addition, the OPPAGA Report No. 98-64 recommends that when considering privatization, the Legislature should consider:

- ✓ Is it appropriate to privatize the service?
- ✓ Is there reason to believe that privatization will save money or improve service?

Staff has reviewed the operation of the Florida Engineers Management Corporation and its enabling legislation, the purpose and result of the Management Privatization Act of 2000, and all available analyses and audits relating to the "privatization" of engineering regulation. Staff has also reviewed the current method of regulating health care practitioners. Furthermore, staff has drawn comparisons between engineering and non-health professional regulation versus dentistry and other health practitioner regulation, including a review and comparison of the financial pressures on each.

Research and review of the engineer's regulatory model demonstrates that privatization of regulatory functions is feasible and may be appropriate. However, in evaluating the factors listed above, it has yet to be shown that privatization has reduced costs significantly or that the performance has improved measurably using objective performance standards. Furthermore, the state paid all start-up costs of the corporation, including equipment and space, and the engineers must still contribute to the overhead expenses of the Department of Business and Professional Regulation (DBPR) and for those specific services still provided by DBPR.

Nonetheless, it appears that the persons using the services of the Florida Engineers Management Corporation (FEMC) and the Board of Professional Engineers are satisfied with the services provided by the corporation. Furthermore, based on statements made by the President of FEMC and information reflecting a minimal turnover in employees at FEMC, it appears that the personnel benefits of privatization are being realized.

This review leads staff to the conclusion that the current health practitioner regulatory framework is confusing to the public, hinders clear accountability, and fosters distrust between boards, departments, and professions involved. In considering available options, the Legislature could:

- **Provide statutory authority for any profession to out-source/privatize particular functions so long as the size of government is reduced proportionately and the profession has adequate resources to cover the cost of such out-**

sourcing/privatization. This option would likely necessitate the transfer of the enforcement component of health practitioner regulation from AHCA to DOH to ensure that the size of government is decreased proportionately to the increase in contractual services, and that all costs are closely monitored. Without such a transfer, DOH would have a contract with AHCA which would need to be modified each time a new board wished to privatize. Oversight of the enforcement function, if dually performed by AHCA and contract entities, would become unmanageable, could result in an increase in the number of persons involved in regulation, and may result in higher costs.

- **Retain regulation as a service provided by state employees but eliminate overlapping and duplicative services and enhance performance and cost-control measures.** This option includes the transfer of the enforcement component from AHCA to DOH thereby eliminating some layers of government that are confusing and create additional overhead costs. This option would ensure that the public, the affected licensees, and the Legislature know which state department is accountable for the quality, quantity, and cost of health care practitioner regulation.

- **Maintain the existing regulatory framework.** This option maintains the status quo which has resulted in disputes between AHCA and DOH and between DOH and the boards over increased overhead expenses; confusion among the public and the affected licensees; and a lack of definite and identifiable accountability.

Each of the aforementioned options are discussed in detail in this report. The first option is feasible and would address the concerns raised by the dentists, but may raise other issues. The second option is also feasible, would alleviate many of the concerns raised by the dentists, and would reduce costs. While the third option, to maintain the existing regulatory framework, is available, it is not recommended as it does nothing to alleviate the concerns identified herein.

In conclusion, privatization of health practitioner regulation functions is feasible and should be considered as an option whenever the state finds that the advantages outweigh the disadvantages. This can be accomplished by enacting option one and making privatization permissive upon meeting certain conditions.

It is recommended that the state carefully consider the advantages and disadvantages of privatizing the regulation of dentists and other health care practitioners, and only privatize/out-source when the profession in question has a positive balance in their trust fund account in an amount sufficient to cover the full cost of regulation. Since dentistry is currently in a cash balance deficit and the revenues projected do not cover the full costs of regulation, it is recommended that any legislative action to specifically privatize the regulation of dentistry be postponed until such time as there is a positive cash balance adequate to cover the costs of regulation for the full biennium.

In the meantime, it is recommended that the Legislature take steps to eliminate confusion, reduce costs, streamline regulation, and enhance accountability by enacting option two with regard to transferring the enforcement component of practitioner regulation from AHCA to DOH.

METHODOLOGY

The Committee on Health Regulation staff began reviewing this issue as a result of a letter sent from the Chairman of the Florida Board of Dentistry, Charles Ross, D.D.S., to Secretary of Health, Robert Brooks, M.D., which stated that the Florida Board of Dentistry had "voted unanimously to pursue statutory authority to have the option of privatizing services which are currently being provided by the Agency for Health Care Administration (AHCA) through contract with the Department of Health...The board wishes to have the authority to create an alternative mechanism for the delivery of these services which would be available, if needed."

The chair of the Committee on Health Regulation, Frank Farkas, D.C., requested that this issue be studied during the interim period between the 2001 and 2002 legislative sessions and on July 13, 2001, Speaker Feeney approved the Committee on Health Regulation to conduct an interim project regarding the feasibility of privatizing certain health regulation functions.

To gain a better understanding of the current situation and the perceived problems, to obtain data, and to solicit opinions, questionnaires were sent to the following organizations and departments:

- Florida Department of Health (DOH)
- Florida Agency for Health Care Administration (AHCA)
- Florida Board of Dentistry (BOD)
- Florida Dental Association (FDA)
- Florida Department of Business and Professional Regulation (DBPR)
- Florida Department of Legal Affairs, Office of the Attorney General (AGO)

All of the organizations and departments responded except the Florida Department of Legal Affairs, Office of the Attorney General which serves as legal counsel to the regulatory boards under both the Department of Health and the Department of Business and Professional Regulation. The responses to the questionnaires and follow-up questionnaires are found in the Appendix.

In addition to the written questionnaires, interviews of the following interested persons were conducted:

- Florida Dental Association President and President-Elect
- Florida Board of Dentistry Chairman and Executive Director
- Florida Department of Health, Director of the Division of Medical Quality Assurance and other staff
- Florida Agency for Health Care Administration staff
- Florida Engineers Management Corporation President
- Florida Board of Professional Engineers' Executive Director
- Florida Department of Business and Professional Regulation Deputy Secretary and other staff

The following reports, reviews, and journal articles were obtained and analyzed relating to "privatization" in general, as well as those relating to how the engineers and health professions are currently regulated:

- OPPAGA Performance Review, Report No. 99-42, Privatizing Regulation of Professional Engineers Has Improved Services, But Increased Costs, March 2000
- OPPAGA Report No. 98-64, Assessing Privatization in State Agency Programs, February 1999
- Auditor General Report Number 12870, Review of State Governmental Nonprofit Organizations, December 1996
- Department of Health Medical Quality Assurance Health Regulation Enforcement Process Improvement Project Final Report by ICATT, April 2001
- Review of the Repeal of the Florida Engineers Management Corporation (Sunset Review) by the House Committee on Business Regulation and Consumer Affairs, September 1999
- Florida Engineers Management Corporation 1999 Customer Satisfaction Survey by Kerr & Downs Research
- Agreement between Florida Engineers Management Corporation and the Department of Business and Professional Regulation, July 2000
- The Revolution in Privatization, The Journal of the James Madison Institute, Summer 2001
- Privatization 2001 by Reason Public Policy Institute
- Florida Senate Interim Project Report 98-25, Model Contracted Services Corporation, by the Committee on Governmental Reform and Oversight

In addition, the 1997 Florida Engineers Management Corporation legislation (s. 471.038, F.S.) and the 2000 Management Privatization Act (s. 455.32, F.S.) were reviewed and compared to the statutory chapters relating to the regulation of dentists and health care practitioners (ch. 20, 456, and 466, F.S.).

Moreover, financial data and performance data were requested of the departments and reviewed to determine the necessity and feasibility of changing the status quo.

Furthermore, committee staff attended the September 28, 2001, meeting in Tallahassee of the Florida Board of Dentistry. During that meeting, staff from the Department of Health and the Agency for Health Care Administration gave a presentation on the regulatory services currently provided by each agency. The Board expressed to those agencies its concerns regarding prosecution of disciplinary cases, attorney turnover, and communication. The President of the Florida Dental Association spoke with the Board about the Association's concerns with the current regulatory system and possible alternatives. The Board discussed its desire to privatize regulation of dentistry and reviewed draft legislation.

PRESENT SITUATION AND BACKGROUND INFORMATION

The two state agencies currently involved in health regulation are the Florida Department of Health and the Florida Agency for Health Care Administration. The jurisdiction and responsibilities of these two state agencies overlap in certain aspects. For instance, although the regulation of health care practitioners is statutorily assigned to the Department of Health, there is a provision in Section 20.43(3)(g), Florida Statutes, that permits the department to contract with the Agency for Health Care Administration for consumer complaint, investigative, and prosecutorial services relating to practitioner regulation. Although this section is now permissive, since July 1, 1997, the Department has contracted with the Agency to provide consumer complaint services, investigations and prosecutorial services for the licensees of the health professional boards and councils.

The statutory framework for practitioner regulation has been evolving over the past several decades. Many of the professions began with an autonomous board which was later merged into one of several state agencies in an attempt to streamline regulation and reduce costs. The state agencies have been reorganized and renamed many times over the years by the Legislature in response to concerns about the delivery of regulatory services.

For instance, the health practitioner regulatory boards were transferred, effective July 1, 1994, from the Department of Business and Professional Regulation (DBPR) to the Agency for Health Care Administration (AHCA) which had been created in 1992. Then, during the 1996 Legislative Session, when the Department of Health and Rehabilitative Services (HRS) was split into the Department of Health (DOH) and the Department of Children and Family Services (DCF), health practitioner regulation was transferred from AHCA to the newly-created DOH. However, the Legislature required DOH to contract back to AHCA for certain health practitioner regulatory services. That mandate to contract with AHCA was made permissive in 1997.

This dual agency framework is unique to health care practitioner regulation. Other state agencies which issue licenses, including but not limited to the Department of Business and Professional Regulation, the Department of Insurance, and the Department of Environmental Protection, also retain the authority and duty to investigate violations of the law and take disciplinary action to revoke the license it issued. Even the Department of Health, in the regulation of emergency medical service providers and radiographers, not only issues the license, but also investigates and prosecutes violations of the law. Furthermore, the Agency for Health Care Administration with regard to health facility regulation issues licenses and maintains the authority to investigate complaints or adverse incidents and take action to revoke the license that it issued.

The Current Role of the Department of Health, Division of Medical Quality Assurance

The Division of Medical Quality Assurance in the Department of Health is responsible for more than 30 health care professions with over 700,000 licensees. Twenty-two health care professions have a regulatory board, created in statute that is responsible for rulemaking and discipline of that particular profession. Examples of such boards are the Board of Dentistry, the

Board of Medicine, the Board of Chiropractic Medicine, and the Board of Nursing. The boards have in-depth knowledge and experience in the practical aspects of that profession and are able to use that information to determine licensure qualifications and render discipline against their peers. The boards work closely with the Department of Health and are staffed by employees of the Division of Medical Quality Assurance. The department carries out the ministerial functions of the boards, including examination, licensing, and licensing renewal. The boards also work closely with the investigators and prosecutors who are employees of the Agency. The boards promulgate rules, decide which applicants meet the licensure requirements, determine if there is probable cause that a violation of the laws and rules governing the profession occurred, and render disciplinary action against licensees found to be in violation of those laws and rules.

The Current Role of the Agency for Health Care Administration

As explained above, AHCA currently receives complaints against health care practitioners, investigates those complaints, and prosecutes the complaints through the disciplinary process. According to information provided by the Agency, the Consumer Services Unit receives more than 16,000 complaints and reports against practitioners annually. These complaints include reports received from consumers, hospitals, required reports by licensees, health facility compliance surveyors, and the Medicaid Program. In July 2001, the Agency transferred the telephone intake and forms-mailing functions as well as public telephone information about disciplinary actions from the Consumer Services Unit to a privatized central intake call center located in Miami. The call center provides the state with bilingual intake abilities. The Investigative Services Unit has eleven field offices which conduct over 6,000 investigations and over 15,000 on-site inspections annually.

The attorneys and staff members of the Legal Services Unit provide legal advice on complaints and investigations, prepare emergency summary orders for the Department of Health Secretary, present cases to health care probable cause panels, litigate disciplinary cases before the Division of Administrative Hearings, present cases to the health care boards for final agency action, and provide appellate representation on disciplinary cases before the District Courts of Appeal. Davis Productivity Awards have been presented to the Consumer Services Unit, Investigative Services Unit, and Legal Services Unit for their employee's efforts at reducing the large backlog of cases produced during 1997 and 1998.

According to the Agency, in 1997 - 1998, the intake and investigative process averaged 517 days from receipt of complaint to recommendation of probable cause, including those cases that were resolved through administrative closure. In response to these delays, the Legislature mandated that cases be investigated and a recommendation made as to the existence of probable cause within a six-month period. The Agency has made significant improvements as a result of this legislative mandate and the additional resources provided by the Legislature in the last several years. According to the information provided by the Agency, compliance with the statutory 180-day time frame for bringing cases to the point of a probable cause recommendation has gone from 79% in November 1999 to nearly 89% as of the end of February 2001.

The Current Role of the Board of Dentistry

The Florida Board of Dentistry consists of 11 members - Seven members of the board must be licensed dentists actively engaged in the practice of dentistry in this state. Two members must be licensed dental hygienists actively engaged in the practice of dental hygiene in this state. The remaining two members must be lay persons who are not, and have never been, dentists, dental hygienists, or members of any closely related profession or occupation. At least one member of the board must be 60 years of age or older.

Staff and Responsibilities—According to information provided by the Division of Medical Quality Assurance, the following positions in the Department's Bureau of Health Care Practitioner Regulation serve the Board of Dentistry:

> Executive Director – (60%) Administrative officer for the Board of Dentistry. Responsible for the total output of each phase of responsibility - from application of a dentist/dental hygienist, to licensure, to consumer complaints, to discipline, and up to the revocation of a dentist/dental hygienist license.
>
> Regulatory Program Administrator – Attends board meetings and committee meetings, provides follow-up from board meetings, reviews final orders for accuracy and ensures filing of same.
>
> Administrative Assistant II - Completion of all minutes; responsible for administrative set-up of Board meetings, including agenda preparation. Responsible for administrative duties involving anesthesia inspections and consultant contracts.
>
> Regulatory Specialist II - Responsible for the application and licensure process for dental and dental hygiene applicants. This includes the collection and inspection of all credentials; knowledge of the laws/rules pertaining to the application/licensure in Florida.
>
> Regulatory Specialist I - Responsible for processing dental radiology applications and dental anesthesia applications. Responsible for inputting data on computer screens, relative to the application, and licensure process for above areas. Clerical support for Program Administrator. Responsible for application process for biennial providers of continuing education.
>
> Regulatory Specialist I - (.5 FTE) Assists with the processing of dental and dental hygiene applications.
>
> Senior Clerk – (.5 FTE) Handles reception duties such as answering telephones and opening mail.

According to the Agency for Health Care Administration, 4 attorney positions have been dedicated solely to the prosecution of dental cases. However, at the Board of Dentistry's meeting on September 28, 2001, one of the prosecuting attorneys announced to the board that she was no longer going to be working on dental cases.

The Current Role of the Attorney General's Office

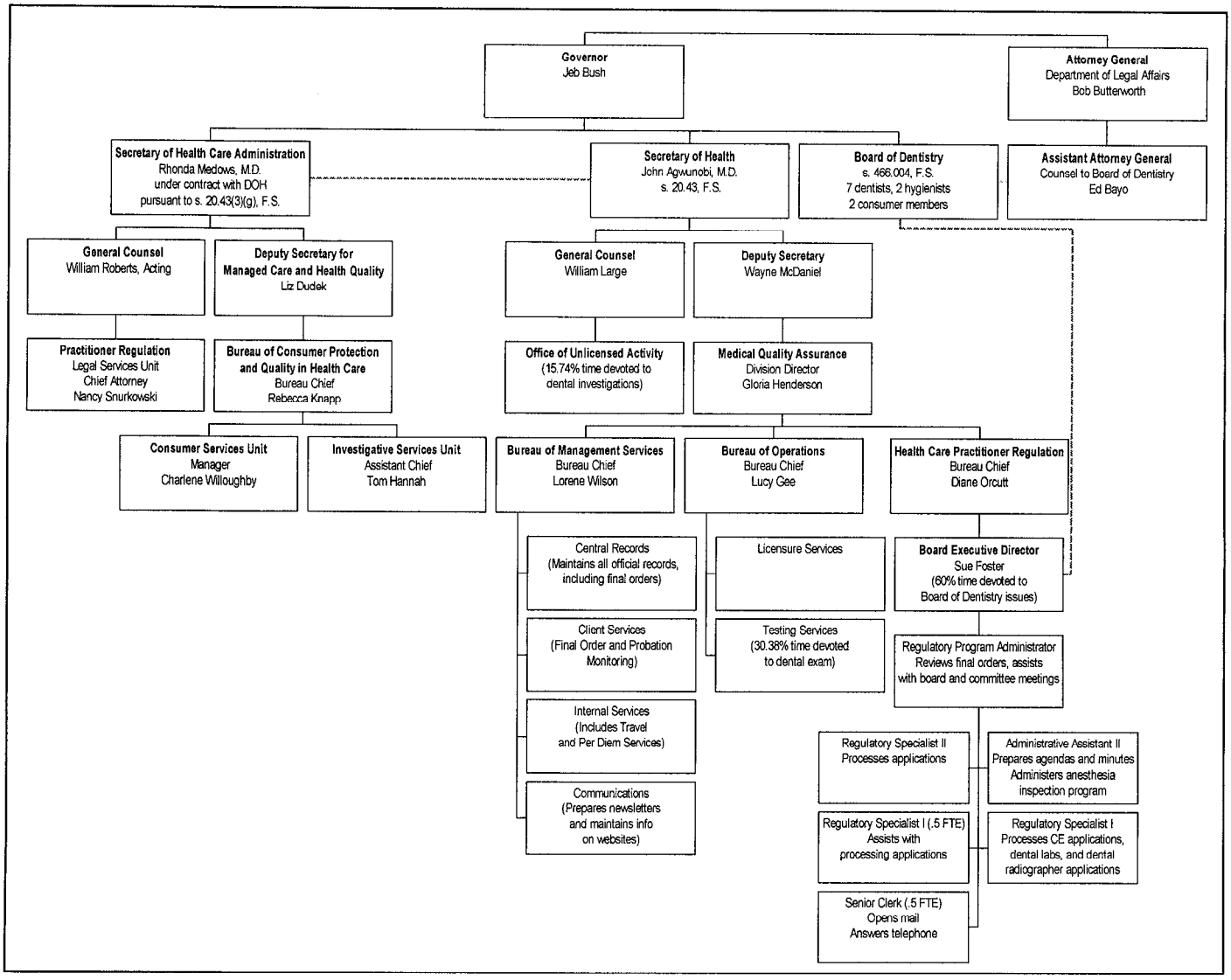
The Office of the Attorney General also plays a role in regulating health care practitioners. Many of the regulatory boards have board counsel provided by an Assistant Attorney General. In their role as legal counsel, the attorneys provide legal advice on any issues that arise, but most frequently advise with regard to rulemaking, Chapter 120 and other due process provisions of law, Sunshine and Public Records Law, and the authority and responsibility of the boards and board members. The attorneys assist with rulemaking by advising on rulemaking authority, drafting the text of proposed rules, and handling the actual promulgation process. They also draft orders and correspondence for the boards as needed.

In addition to the above, the attorneys represent the boards if the boards are brought into litigation in a judicial forum. In this role, the attorneys have represented boards before county, circuit, and appellate courts of the State of Florida, as well as the trial and appellate courts of the federal judiciary. The attorneys within this Section consult with or co-counsel with other attorneys from the Attorney General's Office when special expertise is needed.

Historically, all boards that regulate health care and non-health care professions have had a relationship with the Attorney General. However, in the last several years, the relationships have changed to some degree. For instance, the Attorney General no longer provides counsel to the Florida Real Estate Commission. Instead, private counsel has been retained to provide legal advice to the Commission. Additionally, the Department of Health's Office of the General Counsel now provides legal advice to 14 health care boards.

For more detailed information on the roles of the Department of Health's Division of Medical Quality Assurance, the Agency for Health Care Administration, and the boards, please see the Appendix.

CURRENT REGULATORY FRAMEWORK FOR DENTISTRY REGULATION



FINDINGS AND CONCLUSIONS

Findings Relating to the Regulation of Professional Engineers

Professional engineers are currently regulated by the Florida Board of Professional Engineers. The Governor-appointed members of the Board of Professional Engineers review licensure applications, grant or deny licenses, approve the licensure examination, promulgate rules, and discipline licensees.

The Florida Engineers Management Corporation (FEMC) provides administrative support and performs the ministerial duties of receiving applications and fees, administering the examination, renewing licenses, and investigating and prosecuting complaints. According to the Department of Business and Professional Regulation (DBPR), the specific regulatory powers, duties, and functions conducted by FEMC are set forth within the contract, along with the powers, duties, and functions conducted by DBPR employees. DBPR has retained and exercises its police powers, along with the regulation of unlicensed activity, asserting a lack of legal authority to contract such duties to a non-governmental entity.

According to DBPR, only one DBPR employee is charged with performing services relating to the regulation of engineers, which is the Executive Director, also known as the contract administrator. However, the Executive Director does rely on support from the other areas of the Department such as Planning and Budgeting and the Division of Administration. The powers, duties, and functions of the Executive Director are set forth in the Contract. The cost of the Executive Director for fiscal year 2000 – 2001 was $88,660. This amount is paid from the $200,000, which is retained by DBPR from FEMC's annual appropriation. The services provided by the Executive Director include:

- ✓ Emergency orders. Pursuant to s. 471.038(5), F.S., DBPR is solely responsible for the issuance of any emergency suspension orders. Although FEMC has not referred a case to DBPR recommending that an emergency suspension order be issued, if an emergency order was necessary, the Executive Director would draft the order and execute it, with the approval of the DBPR General Counsel.

- ✓ Unlicensed activity. DBPR investigates and prosecutes unlicensed activity pursuant to s. 471.038(5), F.S. It is DBPR's position that legally FEMC does not have jurisdiction over unlicensed activity. According to DBPR, the total cost of investigating and prosecuting unlicensed activity was $35,667 for fiscal year 2000 –2001. DBPR received 53 complaints for this time period, of which none resulted in an arrest.

- ✓ Licensure application review. According to DBPR, although the Executive Director does review licensure applications, it is the responsibility of Board Counsel to make recommendations. DBPR contracts with the Attorney General's Office to provide Board Counsel.

- ✓ Legal sufficiency determinations. According to DBPR, the Executive Director reviews all complaints when FEMC determines the complaint lacks legal sufficiency. For fiscal year

2000 – 2001, the Executive Director reviewed 28 complaints that were initially determined by FEMC to be legally insufficient.

- ✓ Settlement agreement approval. According to DBPR, the Executive Director does review settlement agreements negotiated by FEMC prior to the settlement being presented to the Board. DBPR provides this function in an oversight capacity.

Section 471.038(3)(i)2., F.S., requires FEMC to submit an annual budget for approval by the board and DBPR. According to DBPR, it reviews the annual budget on a line-by-line basis, and would withhold approval if FEMC fails to comply with its recommendations. The contract amount for fiscal year 2000 – 2001 was $2.17 million. Of that amount $300,000 was held in reserve, leaving a balance of $1.87 million.

According to DBPR, the engineers' license fees are sufficient to cover all costs of regulating engineers. The balance of the engineer's trust fund account as June 30, 2001, was $7.3 million. There are approximately 28,000 engineers licensed in the State of Florida, therefore the cost per engineer is $66.78. The current licensure renewal fee is $125. Therefore, the renewal fee currently covers the full cost of regulation.

DBPR does not have specific control over the location in which board meetings are held, but does have control over the travel budget. DBPR asserts that board meetings have been held in luxury hotels or in cities that are not easily accessible by commercial airplane in the past; however, the travel budget was then reduced for the following fiscal year by DBPR in hopes of curtailing such activity. There are no restrictions in the contract that control meeting locations.

DBPR also does not restrict out-of-state travel for board members. FEMC submits a budget for travel to conferences for DBPR approval, which FEMC then uses in its discretion. The budget is adjusted based on the recommendation of DBPR. The total cost of sending board members to conferences during the fiscal year 2000 – 2001 was $10,835. The board members are very active in the National Council of Examiners for Engineering and Survey (NCEES) which develops the exams for certification as a professional engineer. Therefore, there is a benefit to the public of having these members attend.

There is a written competency examination for the engineers. The examination is administered by FEMC and the fee for each exam charged by NCEES varies among the 13 disciplines. It is a national exam, used by all 50 states. The exam is given two times a year, and is offered in five locations in Florida.

According to DBPR, there is little economic incentive for FEMC to reduce expenses and save money. In the past, FEMC's primary incentive has been to increase services, at the Board's request, which in turn leads to increased costs.

However, DBPR also stated that the Board of Professional Engineers appears to be very satisfied with the services provided by FEMC. The Probable Cause Panel is continuing to work with the prosecuting attorney and investigator to develop the specialization required to process disciplinary matters.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed FEMC for the period of January 1, 1998, through January 1, 2000. The outcome of the review was that although regulatory costs increased, FEMC processed more complaints and established a stronger compliance monitoring system than DBPR. The main advantage appears to be FEMC having dedicated staff, however this does increase costs.

Although the Legislature adopted the Management Privatization Act of 2000 providing authority for boards and DBPR to privatize regulation of additional professions, DBPR has not privatized any other boards or particular functions of other boards.

DBPR does not have plans to privatize additional professions. DBPR is reviewing the possibility of privatizing functions as opposed to completely privatizing entire boards.

Conclusions Relating to the Regulation of Professional Engineers

Based on the information reviewed, staff concludes that:

1. The engineers have a surplus in their trust fund account and the full cost of regulation is recouped from the biennial licensure fees.

2. Using the term "privatization" for the current framework for regulation of engineers is somewhat of a misnomer. The FEMC is a state statutorily-created non-profit corporation funded entirely by state money. The corporation did not exist prior to the 1997 legislation and all start-up costs were paid entirely by the state. The corporation had no track record and has no profit motive. The corporation is no more or no less accountable to the regulatory board and profession as its predecessors at the Department of Business and Professional Regulation.

3. The previous reviews of FEMC were done shortly after it was created. Very little data was available to compare FEMC's performance with the prior performance of the employees at DBPR. Most of the data was subjective, based upon the Kerr and Downs Customer Satisfaction Survey.

4. Additional performance measures are needed in order to more objectively judge the outputs and outcomes of the regulatory system. Performance measures, PB2 measures, could be enhanced in the areas of licensure, examination, and prosecution, and could be used to review the services provided by the executive director/contract administrator, corporate director/president, board counsel, testing services staff, and prosecutorial staff. Additional performance measures should be developed to determine if the actions taken by the board itself are appropriate and meet expectations.

Findings Relating to the Regulation of Dentists and Other Health Care Practitioners

Current Regulatory Framework and Costs

Health practitioners, such as dentists, are currently regulated by the Department of Health, and in most cases, a professional licensing board, such as the Florida Board of Dentistry. The Governor-appointed members of the Board of Dentistry review licensure applications, grant or deny licenses, approve the licensure examination, promulgate rules, and discipline licensees.

The Department of Health provides administrative support and performs the ministerial duties of receiving applications and fees, administering the examination, renewing licenses, etc.

The Department of Health has already out-sourced many licensure and examination functions, including licensure renewal.

The Department of Health has a modern computer system and is seeking to further utilize E-commerce and paperless systems in all business practices. The DOH has contracted for the services of KSJ & Associates to complete a feasibility study, cost-benefit study, and business process analysis by mid-FY 01-02. It is anticipated that implementation of a chosen option will begin the latter part of FY 01-02. MQA was appropriated funds for the process of evaluating opportunities for cost reduction and program efficiencies with the goal to be proceeding toward a "paperless" business environment and maximizing opportunities to partner with other agencies and private businesses. DOH is requesting funds to continue this process in its LBR for FY 02-03.

The Agency for Health Care Administration investigates and prosecutes complaints against licensees, which is sometimes called "enforcement."

The current cash balance of the Medical Quality Assurance Trust Fund is approximately $22 million.

The Florida Board of Dentistry trust fund account is currently in a deficit of more than $1.2 million. A Board of Dentistry member charged with responding to legislative staff inquiries stated that any draft bill should include a fee cap increase and special assessments should there be a need to cover the deficit created by the existing mechanism.

The Board of Dentistry believes that the cost of regulating the profession are excessive for a number of reasons. Having dual bureaucracies (AHCA and DOH) generates additional costs in having multiple layers of attorneys and staff reviewing and approving documents.

According to the Department of Health:

- The total cost of ***regulating*** *all health care practitioners and business establishments* within the Division of Medical Quality Assurance was $60,849,876 for Fiscal Year 1999-2000 and $48,601,668 for Fiscal Year 2000-2001.

- The total cost of ***regulating*** *dentists, dental hygienists, dental interns, and dental laboratories* was $3,628,706 for Fiscal Year 1999-2000 and approximately $3,163,969 for Fiscal Year 2000-2001.

- The total cost of ***licensing*** *all health care practitioners and business establishments* within the Division of Medical Quality Assurance was $44,904,744 for Fiscal Year 1999-2000 and $33,675,147 for Fiscal Year 2000-2001.

- The total cost of ***licensing*** *dentists, dental hygienists, dental interns, and dental laboratories* was $2,530,612 for Fiscal Year 1999-2000 and approximately $1,885,115 for Fiscal Year 2000-2001.

- The total cost of ***examining*** *all candidates for licensure by examination within the Division of Medical Quality Assurance* was $3,603,399 for Fiscal Year 1999-2000 and $2,690,568 for Fiscal Year 2000-2001.

- The total cost of ***examining*** *all candidates for licensure by examination as dentists and dental hygienists* was $679,354 for Fiscal Year 1999-2000 and approximately $691,131 for Fiscal Year 2000-2001. It is estimated that examination costs charged to the Board of Dentistry will be $395,174 in direct charges and $295,957 in allocated charges. These expenses include the development, administration, and defense of the state-developed practical examination. The Board of Dentistry opposes the use of a regional or national clinical exam.

The Board of Dentistry has concerns about control of its examination. The Board is "particularly displeased about not being able to provide its exam at Nova University, thereby making Nova the only university in the nation which does not offer its students this privilege. The FDA believes that both dental schools (Nova Southeastern and University of Florida College of Dentistry) should offer testing services. The Board of Dentistry believes that decisions concerning examination and licensure of professionals should be driven more by professional considerations as opposed to bureaucratic ones. "

The FDA also believes that test results are currently delayed. The FDA believes that the test results need to be on a faster track as delays hamper the ability of new dentists to begin practicing.

According to the Agency for Health Care Administration, the total *cost of* ***enforcing*** *regulation of all health care practitioners and business establishments* within the Division of Medical Quality Assurance was $16,805,671 for Fiscal Year 1999-2000 and approximately $16,867,928 for Fiscal Year 2000-2001.

According to the Department of Health, the *total cost paid to the Agency for Health Care Administration for* ***enforcing*** *regulation of all health care practitioners and business establishments* within the Division of Medical Quality Assurance was $15,945,132 for Fiscal Year 1999-2000 and $14,926,521 for Fiscal Year 2000-2001.

According to the Department of Health, the *total cost of **enforcing** regulation of dentists, dental hygienists, dental interns, and dental laboratories* was for $1,098,094 for Fiscal Year 1999-2000 and approximately $1,278,854 for Fiscal Year 2000-2001.

The costs of enforcement have increased each of the last two fiscal years and are projected to increase more during this current fiscal year. In addition, AHCA has sent a letter to DOH demanding payment of more than $2.35 million for overhead expenses over and beyond the amount appropriated by the Legislature specifically for enforcement services.

The Agency for Health Care Administration has estimated the amount the Department of Health will pay for the Practitioner Regulation activities at the Agency for the fiscal year 2001-2002 will be $18,716,734. This amount includes $16,819,495 for expenditures made directly by Practitioner Regulation staff and $1,897,239 of allocated costs expended by the Agency in support of the Practitioner Regulation staff. AHCA stated that both amounts were legislatively appropriated during the 2001 session. The $16,819,495 is in the Practitioner Regulation program component (1205010000), whereas the $1,897,239 is a portion of the Agency's infrastructure and is included in Schedule I in the Agency's Legislative Budget Request. It shows the Department of Health as one of the many funding sources for the appropriations provided in the Health Care Trust Fund.

An Interagency Agreement (contract) between AHCA and DOH for FY 01-02 is in draft. The current Agreement is in force until the new Agreement is executed.

The contract between DOH and the Department of Legal Affairs, Office of the Attorney General (OAG), specifies that ss. 216.346 and 287.0582, F.S., apply. The contract also requires OAG to submit actual hourly recordkeeping to DOH.

There is no Interagency Agreement between DOH and DOAH; reporting of hours expended is conducted and sent to MQA on a quarterly basis. Reimbursement to DOAH is determined by the legislature based on Legislative Budget Request (LBR) submission by DOAH. DOAH's LBR submission is based on services provided to the various state agencies two years earlier; e.g., their FY 02-03 LBR submission will request appropriation chargeable to MQATF based on services provided to MQA in FY 00-01. It is not known if MQATF will pay DOAH more or less in future years; however, if the past three years are an indication, DOH would expect to see DOAH costs increasing. Following are reimbursements to DOAH the past three years:

FY 00-01:	$1,083,780
FY 99-00:	723,611
FY 98-99:	27,109

MQA has already reimbursed DOAH for FY 01-02 in an amount of $996,615 although their LBR request was for $1.3 million.

DOAH's LBR request for FY 002-03 is an appropriation chargeable to DOH of $2,261,265.

VENDOR NAME	ESTIMATED	FUNDS	PROCUREMENT	CBA/FS	TYPE OF	CONTRACT
MQA TRUST FUND	SHARE*	ORIGINATED	TYPE	CONDUCTED	CONTRACT	MONITORING
Kinko's	$1,320	MQA T/F	ITB	Bid Conducted	PERFORM/ BASED	Annual Programmatic
Loomis Fargo & Co.	$460	MQA T/F	ITB	Bid Conducted	PERFORM/ BASED	Annual Programmatic
FL Medical Foundation	$75,481	MQA T/F	Exempt/287.057(3)(f)	Cost Reimbursement	PERFORM/ BASED	Annual Programmatic
Image API	$24,163	MQA T/F	DMS Purchase	State Contract Bid	PERFORM /BASED	Annual Programmatic
Agency for Healthcare Admin.	$1,278,854	MQA T/F	Interagency	State Agency	PERFORM/ BASED	Annual Programmatic
Attorney General	$50,339	MQA T/F	Interagency	State Agency	PERFORM/ BASED	Annual Programmatic
Division of Admin. Hearings	$148,369	MQA T/F	Interagency	State Agency	PERFORM/ BASED	Annual Programmatic

The chart above, provided by DOH, lists the cost of each function currently out-sourced and performed by an agency or entity other than the Department of Health on behalf of the Board of Dentistry, how the contract for service was negotiated, where the funds originate, how the contract services are monitored, and if performance indicators are used to determine quality of service.

The cost of each function currently performed by an agency or entity other than the Department of Health is shown on the chart below. The chart, provided by DOH, also explains how the contract for service was negotiated, where the funds originate, and if performance indicators are used to determine quality of service.

VENDOR NAME MQA TRUST FUND	CONTRACT AMOUNT	FUNDS ORIGINATED	PROCUREMENT TYPE	CBA/FS CONDUCTED	TYPE OF CONTRACT
American Assoc of SW Boards	0.00	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Federation of State Medical Boards	0.00	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Nat Assoc of Bds of Pharmacy	3,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Professional Exam Services/Psych	70,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Kinko's	245,121	MQA T/F	ITB	Bid Conducted	PERFORM/BASED
Professional Exam Services/PT	9,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
University of South Florida/FMLE	3,003,139	MQA T/F	Exempt/287.057(3)(f)	State Agency	PERFORM/BASED
University of South Florida/CLAB	505,171	MQA T/F	Exempt/287.057(3)(f)	State Agency	PERFORM/BASED
Loomis Fargo & Co.	30,688	MQA T/F	ITB	Bid Conducted	PERFORM/BASED
Linda Smith	1,019,698	MQA T/F	Exempt/287.057(3)(f)	Cost Reimbursement	PERFORM/BASED
FL Medical Foundation	1,137,062	MQA T/F	Exempt/287.057(3)(f)	Cost Reimbursement	PERFORM/BASED
Commission on Dietetics	3,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Resp. Care	4,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Image API	4,487,561	MQA T/F	DMS Purchase	State Contract Bid	PERFORM/BASED
Image API - Bd of Medicine	346,923	MQA T/F	DMS Purchase	State Contract Bid	PERFORM/BASED
Nursing Home Administrators	3,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
FSMB/USMLE	3,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Nat'l Podiatry Examination	1,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Professional Exam Services/M&F	34,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Nat'l Bd of Certified Counselors	50,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Commission for Acupuncture	540,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Agency for Healthcare Admin.	14,926,521	MQA T/F	Interagency	State Agency	PERFORM/BASED
Attorney General	534,696	MQA T/F	Interagency	State Agency	PERFORM/BASED
Division of Admin. Hearings	1,083,780	MQA T/F	Interagency	State Agency	PERFORM/BASED
ASI/Certified Nursing Assistants	0.00	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Nat'l Bd of Osteopathic M.E.	9,000	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Nat Council of St Bd of Nursing	0.00	MQA T/F	Exempt/456.017&287.057	National Examination	PERFORM/BASED
Science Applications Int'l Corp.	2,986,050	MQA T/F	DMS Purchase	State Contract Bid	PERFORM/BASED

Privatization/Out-sourcing of Health Care Practitioner Regulation

The Board of Dentistry supports privatization of health regulatory functions. At its February 2001 meeting, the board voted to seek alternatives to the current enforcement services provided by AHCA. The Florida Dental Association also supports the privatization of the Florida Board of Dentistry and will be submitting proposed legislation for the 2002 legislative session.

The following regulatory functions under the statutory jurisdiction of the department are currently out-sourced to private vendors or other state agencies:

VENDOR NAME MQA TRUST FUND	SERVICE DESCRIPTION
American Assoc of SW Boards	National Examination Services for Florida Candidates
Federation of State Medical Boards	National Examination Services for Florida Candidates
Nat Assoc of Bds of Pharmacy	National Examination Services for Florida Candidates
Professional Exam Services/Psych	National Examination Services for Florida Candidates
Kinko's	Division Copying Services
Professional Exam Services/PT	National Examination Services for Florida Candidates
University of South Florida/FMLE	Examination Services for Florida Candidates
University of South Florida/CLAB	Examination Services for Florida Candidates
Loomis Fargo & Co.	Secured Transportation Services
Linda Smith	Impaired Practitioner Program for Medical Practitioners
FL Medical Foundation	Impaired Practitioner Program for Medical Practitioners
Commission on Dietetics	National Examination Services for Florida Candidates
Resp. Care	National Examination Services for Florida Candidates
Image API	Support Services for Processing of Renewals and Storage of Data Files
Image API - Bd of Medicine	Support Services for Board Agenda Project
Nursing Home Administrators	National Examination Services for Florida Candidates
FSMB/USMLE	National Examination Services for Florida Candidates
Nat'l Podiatry Examination	National Examination Services for Florida Candidates
Professional Exam Services/M&F	National Examination Services for Florida Candidates
Nat'l Bd of Certified Counselors	National Examination Services for Florida Candidates
Commission for Acupuncture	National Examination Services for Florida Candidates
Agency for Healthcare Admin.	Enforcement/ Complaints, Investigations, and Legal Services
Attorney General	Support Services To Provide Legal Representation To All The MQA Boards
Division of Admin. Hearings	Provides Independent Administrative Law Judges to Conduct Hearings
ASI/Certified Nursing Assistants	National Examination Services for Florida Candidates
Nat'l Bd of Osteopathic M.E.	National Examination Services for Florida Candidates
Nat Council of St Bd of Nursing	National Examination Services for Florida Candidates
Science Applications Int'l Corp.	Support Services for the Operation and Maintenance of the CoreSTAT system

According to the board, privatization legislation will require the creation of a management corporation similar to the Engineers. Such legislation would eliminate the possibility of an existing company getting a contract for regulating the dental profession. The regulation duties would be statutorily vested only in the nonprofit corporation created by the legislation. It is not the intent of the board to award the contract to a private company already in existence. The board would like to mimic the board of Engineers' current setup.

The Florida Dental Association (FDA), in its questionnaire response, stated that it believes that:

- Privatization will allow the Board of Dentistry more control over exams.
- Privatization will allow the Board of Dentistry more control over enforcement.
- Privatization will provide the Board of Dentistry with more control over expenditures.
- Privatization will reduce wasteful spending.
- Privatization will eliminate confusion to the public over which regulatory agency (Department of Health or Agency for Health Care Administration) enforces practitioner regulation.
- Privatization will result in better quality regulation.
- Privatization will not reduce overall costs in the short-term, but overall cost should be reduced over the long-term.

The FDA recommends, if necessary, that a one-time assessment be mandated to fund the transition of administrative duties from the Department of Health to a statutorily created management corporation.

The FDA is not aware of any private companies that are capable of undertaking such a task. The FDA recommends the implementation of a statutorily created Dental Management Corporation, similar to that utilized by the Board of Engineers.

The Dental Management Corporation should meet data processing standards which allow its computer systems to interface with the Department's centralized licensee data system.

Several options exist, according to the FDA, in regards to the examination. One would be for the Board of Dentistry to contract the exam administration back to the Department of Health's Bureau of Testing. The contract would establish standards addressing current security concerns, and the timeliness of reporting results. Currently, the Board has no control over such issues. Should the Department choose to not accept such a contract, other private sector options exist.

Under the Management Corporation model, anyone making a phone call to the Board of Dentistry would find a "live person" answering the phone who can immediately direct their call to the appropriate individual. By utilizing staff that investigates only dental complaints, staff specialization will provide for greater responsiveness.

Quality and Timeliness of Regulatory Enforcement

The quality of service provided by the Agency for Health Care Administration does not meet board expectations. Information provided by DOH includes statements by board members and

staff relating to at least 10 boards which have experienced difficulties or expressed concerns about the enforcement services provided by AHCA, including letters of resignation from two Board of Medicine members and information that at least one other probable cause panel member from a different profession has threatened to resign based on concerns about and difficulties with AHCA's performance of the enforcement function. In many instances, it is clear from the documentation provided that AHCA was notified of the issues and was given the opportunity to respond.

A Board of Medicine consumer member resigned from the Board based on her belief that the disciplinary system is inadequate and ineffective, reflecting both frustration with the process and with the decisions of the board itself.

Another Board of Medicine consumer member resigned from the probable cause panel of the Board specifically because of frustration with AHCA "panel shopping" cases to attempt to obtain findings of no probable cause.

The Board of Physical Therapy has voiced their concerns to AHCA's chief attorney on public record regarding the high turnover of prosecutors, and their concerns that as a result of this high attorney turnover, the new prosecutors seemed not to have received the appropriate training.

At a meeting on July 30, 2001, the chair of the Board of Pharmacy asked if it was possible to "go in another direction" rather than using the services of AHCA for enforcement. The chair voiced concerns over several issues with AHCA, among them the problems with enforcement being in a separate agency from DOH, the turnover in prosecutors, the lack of communication from AHCA about changes made to personnel that affected the board, and the high costs.

The quality of prosecutorial service provided by the Agency for Health Care Administration (AHCA) does not meet the Board of Dentistry's expectations.

The Board of Dentistry believes that the present system diffuses authority (and accountability) among two agencies. The Department contracts with AHCA for prosecution services, but in effect is "forced to write them a blank check." Department officials have indicated that the services are paid when billed without monitoring to confirm that the costs submitted are correct, and without performance indicators to determine the quality of service.

The Board of Dentistry believes that the prosecution of disciplinary cases is significantly watered down as cases go through the system. Decisions are oftentimes made based on clerical rather than clinical judgment. The terms negotiated on many stipulations are deemed inadequate by the Board, and are not reflective of the recommendations made by the probable cause panel. On a few occasions, and in an effort to sell the Board on a stipulation, or the probable cause panel on a recommendation for closure, prosecutors have made statements on the record which tend to taint the case. The probable cause panel sometimes confronts cases which would justify an emergency suspension order, but because of delays in presentation of the case, during which time the licensee has continued to practice for a significant period of time, the justification for claiming an immediate threat to the public health safety and welfare has been effectively waived.

According to AHCA:

- The average time (for complaints received January 1999 to date) between the receipt of a legally sufficient complaint and the filing of a ***closing order*** in which no probable cause is found was 273 days for all Medical Quality Assurance cases and 226 days for dental cases. This time period includes an average of 30-90 days where the case might be completed by AHCA and awaiting action by the Probable Cause Panel.

- The average time (for complaints received January 1999 to date) between the receipt of a legally sufficient complaint and the filing of an ***administrative complaint*** was 257 days for all Medical Quality Assurance cases and 245 days for dental cases. This time period includes an average of 30-90 days where the case might be completed by AHCA and awaiting action by the Probable Cause Panel.

- During FY 99-00, 603 Medical Quality Assurance cases were sent to the Division of Administrative Hearings (DOAH) for a formal hearing in which there were disputed issues of material fact. Likewise, according to AHCA, during FY 00-01, 357 Medical Quality Assurance cases were sent to the DOAH for a formal hearing in which there were disputed issues of material fact. Of those cases, only 100 and 26, respectively were dental cases. AHCA counted the number of DOAH filings from records obtained from the Division of Administrative Hearings.

- During FY 99-00, only 39 DOAH proceedings resulted in the issuance of a recommended order to the department or a board within the department for a profession regulated by the Division of Medical Quality Assurance. Of those 39, only 2 were dental cases and neither resulted in a recommendation for disciplinary action. During FY 00-01, 61 DOAH proceedings resulted in the issuance of a recommended order to the department or a board within the department for a profession regulated by the Division of Medical Quality Assurance. Of those 61, only 3 were dental cases.

- For those cases that resulted in a recommended order, it took on average 1,246 days for cases finalized during FY 99-00 and on average 1,041 days for cases finalized during FY 00-01 from the date the complaint was received by the Agency for Health Care Administration for initial review of legal sufficiency to the date the recommended order was issued. For dental cases ending in FY 99-00, the average time was 727 days and for dental cases ending in FY 00-01, the average time was 1,992 days.

AHCA has developed the following chart of internal and statutory timeframes for its prosecutors to follow:

EVENT	TIME LIMITS (maximum days)
STATUS 60	0-65 days for probable cause recommendation with draft pleading attached
Response by Subject	20 days to respond to allegations before complaint is presented to the Probable Cause Panels
Expert Witness review/reports	5 days for 1 page report 30 days for detailed report
Closing Orders	14 days to close in the computer system and send Post PCP letters to Subject and Complainant
Closing Orders	Complainant has 60 days from receipt of notification to "appeal" closure
Complaint becomes Case and Public	10 days after probable cause has been found
Administrative Complaints	To be filed and served within 10 days after probable cause has been found
Supplemental report requests	Due back to legal within 30 days of receipt by investigators
Supplemental report receipt	Upon receipt of supplemental report, Complaint is to be agendaed for NEXT AVAILABLE PCP
Election of Rights	Respondent has 21 days from receipt to respond to the Administrative Complaint
Request for Formal Hearing	Sharyn Smith letter for ALJ assignment is to be sent to DOAH within 15 days
Initial Order from ALJ	Usually 10 days (although individual orders should be read)
Trial Dates	No less than 14 days unless as a result of an ESO/ERO (Section 120.569(2)(b))
Discovery responses	30 days
Response to Motions	7 days
Settlement offers from prosecution to Respondent or Respondent's Counsel	30 days to accept or reject
Counteroffers	30 days to accept or reject
Trial Notebooks due to Chief	7 working days before trial date
Proposed Recommended Orders (PRO) due	10 days from ALJ's receipt of transcript (unless waived)
Exceptions to Recommended Order Due	15 days
Appeals of Final Orders	30 days
Litigation Reports due to Chief	1st of every month

PCP/Final Action Number on Agendas due	Every Monday
General Notices of Action in FAW	7 days
Constructive Service	4 consecutive weeks
Citations	Issued within 6 months of the date of complaint
Citations	30 days to dispute otherwise citation becomes a Final Order
Citations	Generally, 30 days to comply with the terms of the Final Order
ESO/ERO	Document becomes public upon signature of the Secretary of DOH
ESO/ERO Probable Cause Panel Meeting for Finding or Probable Cause for AC to be filed and served IF probable cause is found	A Probable Cause Panel meeting is to be set within 10 days of service of the ESO/ERO to establish probable cause and proceed with AC IF probable cause found
ESO/ERO Administrative Complaint	AC shall be filed and served within 20 days of service of the ESO/ERO, Rule 28-107.005(3)

INTERNAL ALLIED HEALTH ESO/ERO DEADLINES	TIME LIMITS
Attorney review Priority One file review	2 days
Investigation is complete	1-10 days
Draft ESO/ERO	3 days from receipt of completed investigative file
Decline ESO/ERO recommendation	Tuesday/Thursday meeting with Chief to discuss reason
Voluntary Withdrawals	5 days upon attorney's initial review

According to AHCA, employees working directly on complaints/cases record time worked on a daily activity report. The time is designated to a specific complaint/case being worked. The employee's hourly rate is computed on the individual's hourly salary plus overhead budget expenses. The information is input into the time tracking database by complaint/case number. All expenses incurred during the analysis, investigative and legal process are tracked by object code and by dollar amount that is entered into the time tracking database by complaint/case number. An administrative cost report was created by the programmers at DOH for totaling all costs incurred for a particular complaint/case. The administrative cost report is run for each disciplinary case. According to AHCA, best efforts are always made to capture administrative costs in each disciplinary case presented before the boards. A licensee has a right to actively engage in his/her due process right to a trial on the merits. There are occasions where the best interest of the public is better served by the expeditious resolution and discipline of a health care practitioner, rather than the recapturing of all administrative costs for that discipline. Efforts to recapture all costs can be a barrier to negotiating a settlement.

According to the Department of Health, board staff is reporting that although AHCA is not yet including costs in 100% of settlements, the cases where they do not are usually cases that pre-

date 1999. The boards are reporting a much higher rate of consents with costs assessed and anticipate continued improvement in this area. It should be noted, however, that prior to July 1999, the law only allowed for recovery of the investigative costs. In 1999, the statute was changed to allow legal costs to be recouped. However, effective July 2001, that law was amended to make it a requirement rather than discretionary to recover administrative costs.

AHCA answered that on average it takes 273 days to close a case in which no probable cause exists. Given the 180-day statutory timeframe and the availability of teleconferencing, it takes too long for these cases to be closed.

The Agency's performance standard is to close a case in which no probable cause exists within 14 days of the probable cause panel meeting. Even though the analysis, investigation and recommendation of probable cause may be made within the 180-day statutory mandate, some probable cause panels do not meet every month, thus adding an additional 30-90 days before a complaint may be closed. The average of 273 days to close a complaint was based on the timeframe from receipt of a complaint until the actual closure date on the enforcement database.

AHCA provided statistics showing that the disciplinary cases which were resolved during FY 99-00 and FY 00-01 which went through the full DOAH hearing process on average took approximately 3 years. For dental cases, the average length of time for cases ending in FY 00-01 was 5 1/2 years. AHCA stated that there was one 1992 dental case which took 8 years to complete that slanted the 5 1/2 year average reported by AHCA. This case, although not timely, resulted in a Final Order for revocation. Removing this case from the inventory yields a 3 1/2 year average for resolution of the remaining dental cases.

The Agency has internal performance measures for complaints/cases that proceed through the various stages of the disciplinary process. Some of the measures include:

- Days between receipt of Priority I complaint and issuance of an Emergency Order
- Days between receipt of complaint and finding of legal sufficiency
- Days to complete the investigation
- Days from completion of investigation until draft of the Administrative Complaint or Closing Order
- Days from the date of recommendation by legal for probable cause until date of probable cause panel meeting
- Days from date of probable cause panel meeting until the filing of an Administrative Complaint
- Percentage Consumer Services compliance with 10 day internal timeframe
- Percentage Investigative Services compliance with 90 day internal timeframe
- Percentage Legal compliance with 80 day internal timeframe
- Percentage Administrative Complaints filed within 10 days of probable cause panel meeting
- Percentage of complaints completed within 180-days from receipt
- Percentage of complaints closed within 14 days from probable cause panel
- Percentage of referrals to DOAH within 15 days

Furthermore, there is a February 26, 2001, letter from the Chairman of the Board of Dentistry to Secretary Brooks and copied to Governor Bush stating that the Board of Dentistry voted unanimously to seek privatization of the enforcement function currently performed by AHCA under contract with DOH.

In leveling these criticisms at the prosecution of cases by AHCA, the Board of Dentistry stated that it would be remiss if it did not acknowledge that the system creates many of the problems. Prosecutors are assigned unmanageable caseloads. The management appears much more interested in artificial numbers and deadlines than in prosecuting difficult cases. It appears that the prosecutor who can close the most cases is preferred over the one that takes longer to litigate cases. The Board would be much more satisfied if some of the resources used to pay for the dual bureaucracy and the technological advances was directed toward hiring (and retaining) more prosecutors.

The Board of Dentistry has experienced problems with the manner in which AHCA has prosecuted cases on its behalf. The high attorney turnover rate has posed problems for the boards. The Board has been assigned 6 different prosecutors in the last 5 years.

The Board of Dentistry also believes that high staff turnover in prosecution also increases costs several ways. Prosecution of dentistry cases presents challenges to any new prosecutor in that the subject matter is highly technical and requires a significant learning curve. New prosecutors are bound to make some mistakes along the way as they learn the ropes. It seems that shortly after some of the better prosecutors have learned, they have moved on. Furthermore, the lack of continuity hampers effective prosecution in that the new attorney inherits a significant caseload of ongoing cases in all stages of litigation, some of which have hidden "timebombs" that explode on the new prosecutor.

AHCA noted that it has 43 MQA attorney positions as of October 1, 2001, and had 39 MQA attorney positions as of July 1, 2001, compared with only 20 MQA attorneys on January 1, 1999. Thus, the number of attorney positions has doubled during that time. These additional positions were requested by the Agency, and received in 1999, in direct response to the recognition of inadequate and insufficient resources to manage the ever-increasing caseload.

Of the 43 MQA attorney positions currently authorized to AHCA, only 6 MQA attorneys who were employed at AHCA on or before January 1, 1999, are still employed at AHCA as of October 1, 2001.

Attorneys leave employment for many reasons. Agency attorneys have left the Agency to accept employment in private law firms, the Governor's General Counsel's office, insurance companies, and other agencies. Some have left due to a spouse's job relocation or to relocate to be closer to family. Health care is also an area of the economy that is still booming and recruitment of health care attorneys by outside entities is ongoing and vigorous. Certainly, some attorneys have been asked to leave due to performance issues.

AHCA provided data indicating that the Division of Administrative Hearings (DOAH) caseload of MQA cases dropped from 603 to 357 during the last two fiscal years. As a result of

substantially fewer cases being sent to DOAH for hearing, DOH should pay DOAH less for its services than previously paid.

Chapter 120, F.S., requires the Agency to refer a case to DOAH within 15 days from receipt of the election of rights form wherein the respondent requests a formal hearing. This short timeframe limits the abilities of the Agency to enter into settlement agreements with the respondents prior to filing of the case at DOAH. Moreover, costs attributable to DOAH are encumbered upon submission of the matter to DOAH, thus possibly incurring unnecessary costs when a case might be settled within the first 30-45 days upon election of a formal hearing.

Additionally, it is the policy of AHCA to not agree to continuances unless it is in the best interest of the prosecution of the case. The granting or denial of a continuance is the purview of the Administrative Law Judge, not AHCA.

DOAH costs could possibly be reduced if the referral period was 45 days instead of 15. This additional 30-day period could be used to settle more cases before incurring DOAH charges.

Conclusions Relating to the Regulation of Dentists and Other Health Care Practitioners

Based on the information reviewed, staff concludes that:

1. The dentists have a deficit of more than $1.2 million in their trust fund account and the full cost of regulation is not being recouped from the biennial licensure fees.

2. Additional performance measures are needed in order to more objectively judge the outputs and outcomes of the regulatory system. Performance measures, PB2 measures, could be enhanced in the areas of licensure, examination, and prosecution, and could be used to review the services provided by the executive director, board counsel, testing services staff, and prosecutorial staff. Additional performance measures should be developed to determine if the actions taken by the boards themselves are appropriate and meet expectations.

3. Overhead expenses charged to the MQATF could be minimized by eliminating duplicative and overlapping functions between the dual agencies (AHCA and DOH). Transferring the positions and funds from AHCA to DOH will eliminate the need for the MQATF to pay a portion of AHCA overhead.

4. Dental regulatory costs could be decreased if a national/regional practical exam was used because the expense of development and defense would not be incurred by the state.

5. The exam should be administered at both dental schools in Florida and all costs should be borne by the candidates and hosting dental schools.

6. Statutory timeframes relating to DOAH referrals could be adjusted to allow more time for settlement and to reduce DOAH costs attributable to cases referred but settled prior to

hearing.

7. Alternative hearings, using hearing officers with special training in the health professions, could be used in lieu of DOAH proceedings. This could reduce costs. Moreover, the use of specially-trained medical hearing officers might eliminate or prevent fraudulent or below-standard testimony from being accepted as factual.

8. A statutory timeframe could also be established requiring no-probable cause cases to be closed within 14 days after the probable cause panel meets and finds no probable cause exists.

9. Confusion among the public, legislators, and regulated persons could be eliminated or at least minimized by only having one state agency charged with regulating the health care professions. The Department of Health would be clearly held accountable.

10. If the status quo is maintained, the boards and departments need to work together to establish a relationship built on trust. The current situation fosters distrust. There are too many entities presently involved in health regulation with differing missions and goals which results in disharmony, confusion, distrust, and unclear accountability.

11. Each board should be given a travel budget to be used as necessary to fulfill the duties of the board. The boards should have the discretion to choose the location of their meetings so long as they do not exceed their allotted travel budget and so long as the meeting location is readily accessible to the public. Each board should also determine the importance of attendance at and participation in national meetings of boards and board examiners. Board members should be encouraged to participate in these meetings so long as funding is available from the allotted travel budget and participation will enhance the board member's duty to protect the health, safety, and welfare of Floridians.

OPTIONS

This review leads staff to the conclusion that the current health practitioner regulatory framework is not only confusing, but is too costly, hinders clear accountability, and fosters distrust between boards, departments, and professions involved. In considering available options, the Legislature could:

- **Provide statutory authority for any profession to out-source/privatize particular functions so long as the size of government is reduced proportionately and the profession has adequate resources to cover the cost of such out-sourcing/privatization.** This option would likely necessitate the transfer of the enforcement component of health practitioner regulation from AHCA to DOH to ensure that the size of government is decreased and that costs are closely monitored. Without such a transfer, DOH would have a contract with AHCA which would need to be modified each time a new board wished to privatize. Without such transfer, oversight of the enforcement function would become unmanageable and could result in an increase in the number of persons involved in regulation and may result in higher costs.

- **Retain regulation as a service provided by state employees but eliminate overlapping and duplicative services and enhance performance and cost-control measures.** This option includes the transfer of the enforcement component from AHCA to DOH thereby eliminating some layers of government that are confusing and create additional overhead costs. This option would ensure that the public, the affected licensees, and the Legislature know which state department is accountable for the quality, quantity, and cost of health care practitioner regulation.

- **Maintain the existing regulatory framework.** This option maintains the status quo which has resulted in disputes between AHCA and DOH and between DOH and the boards over increased overhead expenses; confusion among the public and the affected licensees; and a lack of definite and identifiable accountability.

The first option is feasible and would address the concerns raised by the dentists. However, the first option could potentially reduce accountability, increase costs, and ignore economies of scale. The second option is also feasible, would alleviate many of the concerns raised by the dentists, and reduce overall costs. While the third option, to maintain the existing regulatory framework, is available, it is not recommended as it does nothing to alleviate the concerns identified herein. Regardless of the option the Legislature chooses with regard to the overall regulatory framework, the Legislature can and should make enhancements to the regulatory system by setting specific performance measures for all involved processes to enhance accountability and timeliness, and further efforts to reduce unnecessary, unreasonable, or duplicative expenses should be pursued.

Advantages and Disadvantages of Privatization, Issues to Consider When Privatizing State Functions, Conclusion, and Recommendation

There are several types of privatization being used today. According to *The Revolution in Privatization* by Lawrence W. Reed printed in the Journal of the James Madison Institute, Summer 2001, pp. 20-24, 32, the most common form of privatization is known as "out-sourcing" or "contracting out." This form of privatization is already being used in health practitioner regulation with regard to licensure renewal, certain national examinations, and standardized credentialing. Also, certain cases have been contracted out to private attorneys for prosecution if the Agency was unable or unwilling to prosecute.

In *Assessing Privatization in State Agency Programs*, Report No. 98-64, published by the Florida Legislature Office of Program Policy Analysis and Government Accountability, February 1999, there is a list and explanation of potential advantages and disadvantages to privatization of public services.

The advantages of privatization noted in the OPPAGA Report No. 98-64 include:

- ✓ Cost savings.
    - o Lower labor costs.
    - o Reduced regulatory requirements.
    - o Reduced overhead.
    - o More personnel flexibility.
    - o Better equipment.
    - o Faster reactions to changing conditions.
- ✓ Staffing flexibility/obtain needed expertise.
- ✓ Political factors.
- ✓ Shift start-up costs to private sector.

The disadvantages of privatization noted in the OPPAGA Report No. 98-64 include:

- ✓ Reduced public accountability.
- ✓ Service quality problems.
- ✓ Higher long-term costs.
- ✓ Workforce issues.

In addition, the OPPAGA Report No. 98-64 recommends that when considering privatization, the Legislature should consider:

- ✓ Is it appropriate to privatize the service?

- ✓ Is there reason to believe that privatization will save money or improve service?

Research and review of the engineer's regulatory model demonstrates that privatization of regulatory functions is feasible and may be appropriate. However, in evaluating the factors listed above, it has yet to be shown that privatization has reduced costs significantly or that the performance has improved measurably using objective performance standards. Furthermore, the state paid all start-up costs of the corporation, including equipment and space, and the engineers must still contribute to the overhead expenses of the Department of Business and Professional Regulation (DBPR) and for those specific services still provided by DBPR.

Nonetheless, it appears that the persons using the services of the Florida Engineers Management Corporation (FEMC) and the Board of Professional Engineers are satisfied with the services provided by the corporation. Furthermore, based on statements made by the President of FEMC and information reflecting a minimal turnover in employees at FEMC, it appears that the personnel benefits of privatization are being realized.

In conclusion, privatization of health practitioner regulation functions is feasible and should be considered as an option whenever the state finds that the advantages outweigh the disadvantages. This can be accomplished by enacting option one and making privatization permissive upon meeting certain conditions.

It is recommended that the state carefully consider the advantages and disadvantages of privatizing the regulation of dentists and other health care practitioners, and only privatize/out-source when the profession in question has a positive balance in their trust fund account in an amount sufficient to cover the full cost of regulation. Since dentistry is currently in a cash balance deficit and the revenues projected do not cover the full costs of regulation, it is recommended that any legislative action to specifically privatize the regulation of dentistry be postponed until such time as there is a positive cash balance adequate to cover the costs of regulation for the full biennium.

In the meantime, it is recommended that the Legislature take steps to eliminate confusion, reduce costs, streamline regulation, and enhance accountability by enacting option two with regard to transferring the enforcement component of practitioner regulation from AHCA to DOH.